

REMARKS

Claims 2-3, 12, 14-15, 20-28, 33-59, 69, and 71-72 have been cancelled. Claims 1, 4-10, 13, 18-19, 60-67, and 75-76 have been amended to clarify the subject matter regarded as the invention. Claims 1, 4-11, 13, 16-19, 29-32, 60-68, 70, and 73-80 are pending.

Claim Rejections – 35 U.S.C. §112

The Examiner has rejected Claims 1, 4-11, 13, 16-19, 29-32, 60-68, 70, and 73-80 under 35 U.S.C. §112, second paragraph.

Claim 13 has been amended in a manner believed to overcome the Examiner's rejection of that claim. Further, in the interests of compact prosecution, the term "competing bidder" has been changed to "second bidder" throughout the claims. Accordingly, all of the Examiner's rejections under 35 U.S.C. §112, second paragraph are therefore believed to have been overcome.

Claim Rejections – 35 U.S.C. §103(a) – Official Notice

The Examiner has rejected Claims 1, 4-11, 13, 16-19, 29-32, 60-68, 70, and 73-80 under 35 U.S.C. §103 as being unpatentable over Walker (7,801,802) in view of the Examiner's Official Notice. The rejections are respectfully traversed.

In the Office Action, the Examiner states the following:

"Walker et al. fails to teach placing a condition on the whom shall receive the bid data. It would have been obvious to one skilled in the art at the time to have place conditions on who shall receive the bid data. **The examiner takes official notice that this is routine in the art (e.g., secret auctions etc).** The motivations for limiting the view of the auction book/depth are also well known. It would have been obvious to have

combined these teachings and have included the conditions (rank, price, etc.) of the claims as motivated by the need to maximize the bid and/or increase the privacy of the auction and/or encourage higher and/or faster bidding.” (Emphasis added.)

Applicants traverse the taking of Official Notice in the rejection of the pending claims. The Official Notice is improper for at least two reasons. (1) Official Notice may only properly be taken of matters of such common knowledge as to be beyond reasonable question or dispute, and such is not the case here. In re Ahlert, 424 F.2d 1088, 165 U.S.P.Q. 418, 420 (CCPA 1970); see also MPEP 2144.03. (2) The “fact” that the Examiner appears to be noticing is different from the limitations that appear in the claims, and thus, even if the “fact” was well-known, the Examiner has failed to make out a *prima facie* rejection under 35 U.S.C. §103(a).

As they currently stand, each of the independent claims recites a specific condition on providing bid data: whether a “second bidder has placed at least one bid.” The Examiner acknowledges that the Walker reference “fails to teach placing a condition on the whom shall receive the bid data.” Naturally, Walker must also fail to teach what is actually recited in the independent claims – namely, that the condition is whether a “second bidder has placed at least one bid.”

The Examiner makes a broad statement that “secret auctions” are routine in the art. However, the fact the Examiner appears to attempt to notice is (1) different from what is recited in the independent claims and is even (2) different from what the Examiner admits is not taught by the Walker reference.

For at least the reasons provided above, Applicants hereby respectfully request that the Examiner either provide documentary evidence to show that the claim limitations for which the Examiner relies on Official Notice are within common knowledge, or allow the pending claims.

The foregoing amendments are not to be taken as an admission of unpatentability of any of the claims prior to the amendments.

Reconsideration of the application and allowance of all claims are respectfully requested based on the preceding remarks. If at any time the Examiner believes that an interview would be helpful, please contact the undersigned.

Respectfully submitted,

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